



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,257	01/06/2004	Mark Girard	10123/04001	4003

7590 11/29/2006

Patrick J. Fay, Esq.  
FAY KAPLUN & MARCIN, LLP  
Suite 702  
150 Broadway  
New York, NY 10038

EXAMINER

GRAY, PHILLIP A

ART UNIT	PAPER NUMBER
----------	--------------

3767

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/752,257	<b>Applicant(s)</b> GIRARD ET AL.	
	<b>Examiner</b> Phillip Gray	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to applicant's communication of 9/7/2006.

Currently amended claims 1-18 are pending and stand rejected below.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1 and 12 specifically and 1-18 generally, have been considered but are moot in view of the new ground(s) of rejection. See rejection below.

Concerning applicant's newly added language of "an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface, the annular surface being coupled to the operative surface by the chamfer", examiner points at that during examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969).

It is examiners position that the Melsky prior art structures fully anticipate the elements of the claims as currently written. Melsky does contain and disclose an access port with a housing, a septum, an attachment portion, a annular surface, a chamfer, and these elements are fully capable of satisfying all operational, structural, functional, and spatial limitations as written in the claims. Therefore the rejections stand as proper.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Melsky et al. (U.S. Patent Number 5,147,483). Melsky discloses an implantable infusion device with an access port. Melsky discloses an access port (10) comprises a housing (67, 20) with a first opening (80), a septum (50) mounted with the housing, and attachment portion with a chamfer, and a second opening (60) that can connect to a catheter (see figures 1, 2, 3a, 3b). Further Melsky discloses a septum seat (92, 40) formed by a housing and an attachment portion (as in figures 2 and 2b), which compresses the septum between. Melsky discloses a chamfer attachment portion that comprises a least one surface angled relative to the operative surface that forms a 45-degree angle and a stepped surface (see figures 3A and 3B). Further the Melsky patent discloses a chamfer attachment portion comprising a curved fillet (20) with a substantially constant radius of curvature and an annular portion abutting a septum seat of the housing (90, 92). Melsky discloses a substantial planar compressed membrane operative surface (50) (that permits penetration and reseal by a needle) overlying the first opening, with a dimension greater than the first opening dimension. Further Melsky discloses that the chamfered attachment portion redirects a portion of the force to compress the outer surface and is subject to a force oriented substantially perpendicular to the plane of the

Art Unit: 3767

outer surface (see paragraphs beginning at column 5, line 51 through column 4, line 30). Melsky also discloses that the operative surface is formed of a flexible polymeric material (see paragraphs beginning at column 5 line 16).

Concerning the amended claims 1, 4, 9, and 12, examiner is defining "an annular surface" as shaped like or forming a ring and "extending radially" as "of, like, or pertaining to a radius or a ray". Under this reading of the claims as currently amended, Melsky prior art discloses does disclose "an annular surface extending radially beyond a periphery of the operative surface and separated from the operative surface in a direction substantially perpendicular to the annular surface, the annular surface being coupled to the operative surface by the chamfer" and the "operative surface in a direction substantially parallel to the annular surface" (see figure 2, and 3b). It is the examiners position that the housing, septum, annular surface, and attachment portion are fully capable of satisfying all structural, functional, operational, and spatial limitations. The current amended claim limitations do not overcome and distinguish over the prior art of record.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3767

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*P/S*

PAG

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*